IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2655 OF 2004

IN

SUMMARY SUIT NO. 1488 OF 1999

Arpan Leasing Co. Ltd. ..Plaintiff

versus

Supreme Aspahlts Pvt. Ltd

& Anr. ..Defendants

Mr. Cyrus Ardeshir i/b. M/s. S. Ashwinikumar & Co. for the Plaintiff.

Mr. R. P. Ojha for the Defendant.

CORAM : D. G. DESHPANDE,J.

DATE : 1ST OCTOBER 2004.

P.C. :

1. This notice of motion is taken out by the defendants. Heard Counsel for the Defendants and plaintiff. Earlier in the suit when the plaintiff took out Summons for Judgment conditional leave was granted to the defendants to deposit Rs.6,50,000/=. The defendants could not deposit the amount therefore summons for judgment was made absolute and exparte decree came to be passed.

2. Thereafter the defendants took out a ntoice

of motion for setting aside that order wherein he was directed to deposit Rs.12,81,855/= i.e. the entire amount of claim as a condition. Accordingly he deposited the said amount, but the notice of motion was allowed to be withdrawn on technical ground that the prayer for leave to defend was not made, with liberty to take out another notice of motion.

3. Accordingly this notice of motion is taken out under the liberty granted.

4. Notice of Motion was opposed by the plaintiff that no sufficient case is made out under Order XXXVII Rule 4 of CPC. The fact that the defendants have deposited the full amount of the claim and further the plaintiff has also withdrawn that amount. The interest of the plaintiff is fully protected after he received the full amount of deposit because it would have taken years for them to realise the amount in execution. Therefore as a special case this notice of motion is allowed. Exparte decree is set aside and leave to defend the suit is granted to the defendants.

5. Written statement or points of defence to be filed within a period of twelve weeks from today and affidavit of documents or list of documents within two weeks thereafter. Discovery or inspection of documents within twos weeks thereafter. Suit to be

placed on regular board for hearing thereafter.

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